

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Lifeline and Link-Up)	WC Docket No. 03-109
)	

**THE PENNSYLVANIA PUBLIC UTILITY COMMISSION’S
REPLY COMMENTS**

The Pennsylvania Public Utility Commission (PaPUC) hereby respectfully submits its Reply Comments in response to the Commission’s Public Notice released on June 9, 2003, the *Recommended Decision* of the Federal-State Joint Board for Universal Service (Joint Board), released April 2, 2003, and comments that were filed thereto on August 18, 2003, in the above captioned proceeding on Lifeline and Link-Up service for all low-income consumers. The PaPUC will limit its reply comments to the following issues:

- Income Based Eligibility
- Expansion of Program-Based Eligibility
- Dispute/Appeal Process
- Verification of Eligibility for Enrollment
- Verification of Continued Eligibility
- Automatic Enrollment
- Outreach

Note that the lack of replies to all of the comments submitted at this docket should not be construed as the PaPUC's agreement with those comments.

Income Based Eligibility

At Paragraph 15 of its *Recommended Decision*, the Federal-State Joint Board on Universal Service (Joint Board) recommended the addition of an income-based standard to the current default federal eligibility criteria. Specifically, the Joint Board recommended that a consumer be eligible for Lifeline/Link-Up when the consumer's income is at, or below 135% of the Federal Poverty Guidelines (FPG). *Recommended Decision* at ¶ 15. The Joint Board found that adding an income-based criterion of 135% of the FPG would increase low-income participation in Lifeline/Link-Up programs. *Id.* However, the Joint Board also recognized that the *Public Notice* in this proceeding did not include a specific FPG proposal, and recommended that the Commission seek additional comment on whether 135% of the FPG is appropriate or whether a different FPG level should be used for the federal default eligibility criteria. *Recommended Decision* at ¶ 17.

Since Pennsylvania has already adopted a standard of 150% of the federal poverty guidelines¹, the adoption of a different income-based eligibility standard (135% FPG) will cause an increase in administrative expense for Lifeline Service. Accordingly, if the Commission determines that 135% FPG should be adopted as the standard for income-based eligibility, the PaPUC believes that it is essential some accommodation be made for those state programs currently using 150% FPG as an eligibility standard. The PaPUC proposes that this accommodation is best accomplished either by conferring grandfather status on existing programs, or by permitting the individual states to determine the percentage FPG that will be used to govern income based-eligibility for Lifeline/Link-up Programs.²

¹ The Lifeline 150 program adopted by the PaPUC in September 1999, expanded eligibility for support to all subscribers with incomes at, or below 150% of the federal poverty level. This program does not include state-mandated support. Eligible customers must have incomes at, or below 150% of the FPG and participate in one of the following programs : General Assistance, Supplementary Security Income, Temporary Assistance for Needy Families, Food Stamps, Low Income Home Energy Assistance Program, Medicaid, Federal Public Housing Assistance or State Blind Pension.

² A suggestion to leave determination of percentage of FPG for program eligibility to the states was proposed by the Oklahoma Corporation Commission in its comments at p. 2. Bell South also asserted this position in its comments at p. 3.

Expansion of Program-Based Eligibility

The Joint Board recommended adding two additional assistance programs to the current list of default federal eligibility criteria. *Recommended Decision* at ¶ 20. Specifically, the Joint Board recommended that the Commission add the Temporary Assistance to Needy Families program (TANF)³ and the National School Lunch free lunch program (NSL). The Joint Board believed that these programs would help to capture more low-income individuals and would increase telephone subscription among low-income households. *Id.*

Participation in TANF is currently used as a basis for eligibility in Pennsylvania's Lifeline programs. Accordingly, the PaPUC supports the use of eligibility for TANF as an eligibility criterion for Lifeline service as well.

Dispute/Appeal Process

At Paragraph 29 of its *Recommended Decision*, the Joint Board recommended that the Commission adopt a federal rule that requires carriers to notify consumers of their impending termination of Lifeline benefits and to implement an appeals process. The Joint Board suggested a period of 60 days notice.

The PaPUC believes that a 60-day notice of termination is sufficient under Pennsylvania law to allow the customer to begin the process to dispute the termination of Lifeline service, based on change in eligibility, or for other reasons. Under PaPUC regulations, a carrier is required to provide at least 7 days notice before the date of proposed suspension of telephone service. *See* 52 Pa. Code § 64.71.

At Paragraphs 29 and 30 of the *Recommended Decision*, the Joint Board recommended that the Commission obtain more information about how an appeal process might work and the appropriate time period for the appeal process. The Joint Board states that it wishes to balance the needs of Lifeline recipients with the administrative burden that an appeals process may impose on carriers. The Joint Board recommended an

appeals process be used only in circumstances where the carrier has initiated termination of benefits, and that an appeal process is not necessary where the recipient himself has notified the carrier that he is no longer eligible.

The PaPUC disagrees with the Joint Board's recommendation, and does not see the need for an appeals process to be established specifically for Lifeline/Link-up programs. At present, Pennsylvania carriers would treat an appeal regarding termination of Lifeline service as a "dispute"⁴ and would follow the PaPUC procedural rules regarding the resolution of disputes at 52 Pa. Code §§ 64.131 - 64.134; and §§ 64.141 - 142. Termination of service is stayed pending resolution of the dispute. 52 Pa. Code § 64.133.

If the customer is dissatisfied with the carrier's resolution of the dispute, the customer can file an informal complaint,⁵ or formal complaint⁶ with the PaPUC and pursue that complaint to hearing before the Office of Administrative Law Judge (OALJ), and appeal to the PaPUC through exceptions filed to the OALJ's decision. *See* 52 Pa. Code § 3.111 - 3.113; §§ 5.1, *et seq.*; §§ 64.131 - 1.71.

These established administrative procedures ensure procedural due process for Pennsylvania Lifeline subscribers and the carriers, and expeditious resolution of any disputes or complaints. Therefore, the PaPUC believes that the imposition of a special process for appeal of adverse eligibility decisions regarding Lifeline service is not only unnecessary, but also would result customer confusion, and undoubtedly, additional

³ TANF replaced the Aid to Families with Dependent Children program (AFDC). TANF is codified at 42 U.S.C. §§ 600 *et seq.*

⁴ A "dispute" is defined at 52 Pa. Code § 64.1 as "a grievance of an applicant, customer or customer's designee about a utility's application of one or more provisions covered by this chapter, including credit determinations, deposit requirements, the accuracy of amounts billed or the proper party to be charged, which remains unresolved after the initial contact or utility follow-up response when the applicant, customer or customer's designee consents to the utility reviewing pertinent records or other information and calling back."

⁵ The timely filing of an informal complaint acts as a limited stay and the LEC may not suspend or terminate service until the complaint, including one involving universal service eligibility, is resolved. *See* 52 Pa. Code § 64.153(a).

⁶ The timely filing of a formal complaint acts as a limited stay and the LEC may not suspend or terminate service until a complaint, including one involving universal service eligibility, is resolved. 52 Pa. Code § 64.161(b).

expense for the carrier.⁷ Accordingly, the PaPUC states that the establishment of appeal process for the termination of Lifeline benefits should be left to the states.

Verification of Eligibility for Enrollment

The Joint Board did not recommend modifying the current certification procedures for enrollment using program-based eligibility. The Joint Board believed that the Commission should continue to require self-certification, under penalty of perjury, as the federal default rule, while allowing states the necessary flexibility to require more strict measures for certification as they deem appropriate. The Joint Board did recommend, however, that consumers eligible for federal or state Lifeline/Link-Up support under an income-based criterion should be required to present documentation of income eligibility prior to being enrolled in the program. *Recommended Decision* at ¶¶32, 33. The Joint Board was concerned that there may be a greater potential for fraud and abuse when an individual self-certifies his/her income eligibility than there appears to be when an individual is enrolled in a qualifying program because program enrollment is more easily verified. Accordingly, the Joint Board recommended that the Commission require all states, including states that use the federal default criteria, to adopt certification procedures to document income-based eligibility for Lifeline/Link-Up enrollment in order for the carriers in that state to continue to receive federal Lifeline/Link-Up support. *Recommended Decision* at ¶ 34.

The PaPUC supports the Joint Board's recommendation that allows states the flexibility to verify program participation or income level in addition to customer self certification of eligibility for enrollment. In Pennsylvania, most companies use the Pennsylvania Department of Public Welfare's data base to verify eligibility for program-based enrollment. *See Verizon Petition for Waiver of § 54.409(b) for Lifeline 150*, Dec. 26, 2002, FCC 96-45. Verizon North and Verizon Pennsylvania (Verizon PA) also utilize available data bases from the Pennsylvania Department of Revenue (DOR) to

⁷ In its comments at pp. 5-6, Dobson Communications Corporation expressed concern with the costs involved in a carrier appeal process.

verify income tax forms for their income-based universal service subscribers⁸. However for Lifeline applicants who did not file a state income tax, they must produce written documentation to verify their income levels.

Verification of Continued Eligibility

For verification of customer eligibility to continue participation in universal service programs, the Joint Board suggested that states could access the documentation via an online database, if available in that state, or could require consumers to provide one or more forms of documentation from the following list: a tax return from the prior year, a current income statement from an employer or a paycheck stub, a Social Security statement of benefits, a Veterans Administration statement of benefits, a retirement/pension statement of benefits, an Unemployment/Workmen's Compensation statement of benefits, a divorce decree or child support document, or other official governmental agency documents. *Recommended Decision* at ¶35.

The Joint Board also suggested that states that choose to include these types of documentation as acceptable forms of proof of income-eligibility should additionally require consumers to certify, under penalty of perjury, that the income identified for eligibility purposes includes all income currently being received by all members of the consumer's household. *Id.*

Finally, the Joint Board also recommended that all states, including states that use the federal default criteria, require Lifeline/Link-Up consumers that are qualifying under the income criteria to self-certify, under penalty of perjury, the number of individuals in their household. *Recommended Decision* at ¶ 37. The Joint Board also indicates that, in addition to documentation, random auditing can also be used as an effective method of certifying income eligibility. *Id.*

⁸ Prior to 1999, Pennsylvania's Lifeline program targeted those customers who had incomes at or below 100% of the federal poverty guidelines, who received Supplemental Security Income **or** who participated in certain Pennsylvania Department of Welfare programs. All companies except Verizon PA f/k/a Bell Atlantic PA were directed to discontinue the former Lifeline program and implement the Lifeline 150 program. As a result of the Commission's order addressing the merger of Bell Atlantic PA and GTE North, Verizon North f/k/a GTE North is also required to offer Lifeline Service under the same terms and conditions as Verizon PA.

The PaPUC believes that a requirement to provide paper documentation to prove continuing customer income eligibility may be burdensome for both the customer and the carrier, whether the documentation is requested on a periodic basis or a random basis. Accordingly, the PaPUC agrees with the comments of Dobson Communications Corporation's Comments at pp. 3-4; National Law Center Comments at p. 7; and NASUCA Comments at pp. 20-21.

The PaPUC has some concerns about customer privacy in regard to the Joint Board's recommendation for the random auditing of social programs for continued universal service eligibility. With the passage of the Health Insurance Portability and Accountability Act of 1996,⁹ carriers may need to obtain individual waivers from customers in order to access information about customer participation in certain welfare programs that are used as criteria for universal service eligibility. Furthermore, carriers will be liable for misuse of that information, and most likely would not want to take on that responsibility. *See also* 45 CFR Parts 160 and 164 (relating to standards for privacy of individually identifiable health information).

Automatic Enrollment

The Joint Board recommended that the Commission encourage all states, including states that use the federal default criteria, to adopt automatic enrollment as a means of certifying that consumers are eligible for Lifeline/Link-Up and also to encourage enrollment in Lifeline/Link-Up. *Recommended Decision* at ¶ 38. According to the Recommended Decision, automatic enrollment is an electronic interface between a state agency and the carrier that allows low-income individuals to automatically enroll in Lifeline/Link-Up following enrollment in a qualifying public assistance program. *Id.*

The Joint Board believed that states who wish to implement automatic enrollment procedures should follow the lead of other states with similar procedures in place. *Recommended Decision* at ¶39. The Joint Board stated that public assistance enrollment data should be treated in a confidential manner to alleviate any privacy concerns. *Id.* In

⁹ P.L. 104-191, August 21, 1996, 110 Stat. 1936.

addition, the Joint Board stated that consumers should have the opportunity to decline enrollment in Lifeline/Link-Up if they choose. *Id.*

The PaPUC notes that the Joint Board has recommended only that the Commission encourage, and not mandate states to adopt automatic enrollment. The PaPUC agrees with the approach of giving states discretion to determine what is appropriate based on their individual needs. However, in its comments, NASUCA advocates that the Commission adopt automatic enrollment as a requirement for the federally funded Lifeline program, subject to waiver upon request of individual state commissions. NASUCA Comments at pp. 14-18. Other commenters supporting automatic enrollment include ACORN Comments at pp. 2-3, and Texas Office of Public Counsel Comments at p. 6, and the U. S. Conference of Catholic Bishops *et al.* Comments at p. 3.

Under Pennsylvania law, adding or a changing a consumer's telecommunications service(s), without the customer's permission would constitute cramming, i.e., the inclusion of unauthorized services. 52 Pa. Code § §64.2. The PaPUC does not believe that the ability of the customer to opt out of the service at a later date cures the illegality of changing a customer's service without his/her authorization. The unauthorized change in service, even if it is to enroll a customer in a universal service program would still constitute cramming under Pennsylvania law.

Additionally, in its comments, Bell South raises privacy concerns regarding the handling by carriers of sensitive information acquired by government agencies regarding consumers and the costs for the carrier of establishing its own on-line database and system that would allow for automatic enrollment. The PaPUC believes that these concerns cannot be discounted. Therefore, PAPUC agrees with the commenters that states treat public assistance enrollment data as confidential and that an eligible household must give permission to release its personal information.

OUTREACH

The Joint Board recommended that the Commission provide outreach guidelines

to states and carriers to improve Lifeline/Link-Up subscribership. *Recommended Decision* at ¶ 50. The Joint Board also believed the Commission should not require specific outreach procedures, but should instead provide guidelines for states and carriers so that they can adopt their own specific standards and engage in outreach themselves. *Id.* The guidelines would provide states and carriers with examples of how to reach those likely to qualify, but would still allow states and carriers to retain authority to determine the most appropriate outreach mechanisms for their consumers. *Id.* Specifically, the Joint Board recommended that:

(1) states and carriers should utilize outreach materials and methods designed to reach households that do not currently have telephone service; (2) states and carriers should develop outreach advertising that can be read or accessed by any sizeable non-English speaking populations within the carrier's service area; and (3) states and carriers should coordinate their outreach efforts with governmental agencies/tribes that administer any of the relevant government assistance programs. These guidelines are described in detail in the paragraphs below. An appendix compiling state practices is also included in this document. State practices include establishing marketing boards to devise outreach materials, providing multi-lingual customer support, and implementing innovative tribal outreach practices.

Recommended Decision at ¶ 51(appendix omitted).

The Joint Board also recommended that the Commission encourage states to establish partnerships with other state agencies and telephone companies in order to maximize public awareness and participation in the Lifeline/Link-Up program. *Recommended Decision* at ¶ 50.

The PaPUC believes that outreach using media and institutions is very necessary to provide the benefits of universal service to the maximum number of eligible customers possible. In Pennsylvania, where telephone subscribership already is very high, it is extremely important to reach those individuals who are unaware of the availability of financial assistance to access telecommunications services. Accordingly, the PaPUC supports the Joint Board for providing leadership in this important area and agrees with the Joint Board's comments in regard to outreach.

Respectfully submitted,
Pennsylvania Public Utility Commission

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